

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KIM PEREIRA,)	
)	
Petitioner,)	
vs.)	NO. CIV-11-0473-R
)	
TERRY BOX, Sheriff,)	
)	
Respondent.)	

ORDER

Petitioner Kim Pereira, a state prisoner appearing *pro se*, brings this petition for writ of habeas corpus under 28 U.S.C. § 2241.¹ Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Gary M. Purcell. Judge Purcell recommended that petitioner's motion to proceed *in forma pauperis* be denied. Subsequently, Mr. Pereira paid the filing fee. [Doc. #12]. Additionally, Judge Purcell has recommended the petition be dismissed without prejudice for lack of jurisdiction over the respondent. Objections to the latter Report and Recommendation were due by August 25, 2011.

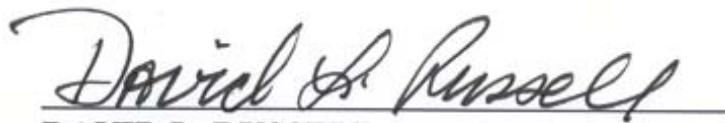
The parties, having failed to object to the Report and Recommendation, waived their right to appellate review of the factual and legal issues it addressed. United States v. 2121 E. 30th St., 73 F.3d 1057, 1059 (10th Cir. 1996); *see also* 28 U.S.C. § 636(b)(1)(C) ("A judge of the court shall make a de novo determination of those portions of the report or

¹*As Magistrate Judge Purcell noted, petitioner actually filed under 28 U.S.C. § 2254; however, petitioner is challenging the execution of his sentence and not its validity. Therefore, his petition is properly considered as one under § 2241. See McIntosh v. U.S. Parole Comm'n, 115 F.3d 809, 811 (10th Cir. 1997).*

specified proposed findings or recommendations *to which objection is made.*" (emphasis added)). Accordingly, the court **ADOPTS** Magistrate Judge Purcell's Report and Recommendation [Doc. #16]. Petitioner's emergency motion [Doc. #3] and petition [Doc. #1] are **DENIED**. Further, the motion to proceed *in forma pauperis* [Doc. #2] is **STRICKEN** as **MOOT**. Finally, as petitioner has not "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), the petitioner is **DENIED** a certificate of appealability.

IT IS SO ORDERED.

Dated this 18th day of November, 2011.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE